UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. LAWRENCE WILLIAMS, Defendant.	)	NO. CR 08 5601BHS DEFENDANT'S SENTENCING MEMORANDUM

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The defendant, Lawrence Williams, by and through his attorney of record, Roger A. Hunko hereby files this sentencing memorandum.

STATEMENT OF THE CASE

On October 30, 2008 a Grand Jury for the Western District of Washington returned a two count Second Superceding Indictment against Lawrence Williams and others. Count 1 charged that Lawrence Williams, beginning within the last five years and continuing until July 31, 2008, conspired to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a), 841(b)(1)(B), 841 (b)(1)(B) and 846. Count 2 charged Lawrence Williams with Witness tampering, in violation of 18 U.S.C. §§ 1512(b)(1), 1512(b)(2)(1) and 1512(b)(3), on or about August 3, 2008.

Mr. Williams pled guilty to those charges pursuant to the terms of a written Rule 11(c) Plea. The unusual condition of the plea was that the government would not do anything to prevent him from having contact with B.B., the woman he views as his fiancee and also a

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360 876 1001

person who was alleged to have been part of the conspiracy he was charged with and a witness against him. This term of the agreement was either broken by the government, when they left that decision to BOP or there was never a meeting of the minds as to what that term actually meant. As a result his contact with B.B. was limited and as a result Mr. Williams sought new counsel and eventually won a motion to withdraw his plea on October 1, 2009.

Mr. Williams was found guilty of the same enumerated charges on March 26, 2010 by a jury. The jury made a finding that the offense involved more than 5 grams of cocaine base.

On August 3, 2010 the president signed the Fair Sentencing Act of 2010. S 1789. That act raised the set point to trigger the mandatory minimum to 28 grams up from 5 grams previously specified. The United States Sentencing Commission was further ordered to promulgate new guidelines to recognize the reduction in the amount of cocaine base to compute the range under the guideline.

ARGUMENT

Mr. Williams has never denied that he sought drugs while in the Special Commitment Center on McNeil Island and that the drugs that were delivered to him were delivered through the efforts of B.B., A.W. J.S. and Paepaega Matautia actually delivered the drugs to him. Mr. Williams admitted on the stand that he is and has been since his childhood addicted to cocaine.

The supervisor of the commitment center admitted that his records do show him to be an addict. His only claim of defense was that he only sought the drug for his own use. It is of note that no witnesses were called by the government to say that they had ever received any cocaine base from him.

The government would paint all of the individuals involved in this conspiracy as victims. Perhaps a better way to view these people is taken from a saying attributed to P.T.

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Barnum, "You can never cheat an honest man." Lets look at the players the government believes are just pawns to Mr. Williams manipulation. B.B. was and maybe still is a commissioned officer in the United States Army. She was employed by the State of Washington to provide nursing care to persons residing at the commitment center. People who the government acknowledges in its memo cannot leave the facility. People who because of their predilections the State feels must be kept separate from the rest of us.

Yet this woman starts a relationship with one of the persons she is payed to take care of, a relationship, which includes sex, both phone and actual. She willingly was involved production of sex videos with various other individuals who are also claimed victims of Mr. Williams. The others each took monetary rewards for their involvement. Something that could clearly be ***defined*** as prostitution.

Each of the ***initialed*** individuals mentioned in the governments memorandum have one thing in common that Mr. Williams lacks. Freedom, each could have simply walked away from the conspiracy. They all have free will. Their phone numbers were theirs to change. A phone block could have been put on their phone, yet each willingly participated in the enterprise. They were not victims they were co-conspirators. They all gained by their cooperation with the government against Mr. Williams.

Then we go to Paepaega Matautia, who worked at the facility. Someone who was charged with counseling and taking care of the residents. The court must remember that the individuals who reside in the that facility are people who other courts have found unable to control their desires. Mr. Matautia willing participated. He was perfectly willing to accept the rewards for his actions, even knowing that it would harm at least Mr. Williams, but if he really believed that Mr. Williams was distributing, other residents as well. He could of and should of reported it immediately to his superiors so a investigation could have begun.

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Instead he chose, again he has free will, to involve himself in the conspiracy and take the monetary rewards. These people are not victims, they thought to benefit from their behavior, either by the pleasure they derived from the relationship or from the promise of money, cars or whatever. Each has continued to make choices which benefit them. Each agreed to cooperate and each has benefitted in a favorable sentence. It is believed but not known at this time that A.W. may have benefitted by favorable recommendations to dismiss charges that were pending in Oregon and Alaska. The defendant agrees with paragraph 18 of the pre-sentence report that there are no identifiable victims in this case.

As to paragraph 20 of the pre-sentence report, while it is true the defendant refused to come down from his cell at the FDC on May 19, 2009, it was because he thought that I was Mr. Olbertz. No attempt was made to meet with the probation officer after his subsequent conviction, based on advice of counsel.

As noted earlier the Fair Sentencing Reform Act should change the levels in this case. When the initial guidelines were promulgated the ratio between base cocaine and powder was 100 to 1. Which meant that a white individual who provided the powder to a black individual who later converted the powder to base, by simply adding baking soda and water and heating the mixture could expect to receive 100th of the sentence of the black man. 5 grams of crack equaled a mandatory 5 year minimum while it took 500 grams of the powder to get the same mandatory minimum. As of the passage or the Fair Sentencing Act the ratio is 28 to 500 a little less than 1 to 18. This same ratio should be applied in figuring out what the guideline range should be. Using this ratio, the 5 grams of cocaine base found in this case converts to 90 grams of cocaine. Which is a level 16. U.S.S.G. § 2D1.1(2).

Using a level 16 as the base level, and a criminal history level of II the presumptive base range is 24 to 30 months. Giving the defendant the two point adjustment for Obstruction

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of Justice, because of his conviction for witness tampering. Moves the range to 20. Which computes to 37-46 months. U.S.S.G § 5.A. If the court were to find that he had accepted responsibility that would negate those two points again bringing the proper sentence under the guidelines to 16.

The status of detention facility is one the court will have to deal with. While it is true that the defendant at the time of crime was at McNeil Island at the SOC the definition of that place as a detention facility is unclear. Is it a mental institution, with the aim of rehabilitating its residents or is it an arm of the prison system.

Black's Legal Dictionary defines detention as follows.

> The act of detaining.
>
> The state or a period of being detained, especially:
>
> 1. A period of temporary custody while awaiting trial.
> 2. A period of confinement to a detention home.
> 3. A form of punishment by which a student is made to stay after regular school hours.
>
> . A forced or punitive delay.

The SOC does not clearly come under any of these definitions and since the U.S.S.G. does not clearly define it the rule of lenity would require a finding that it does not apply to the unique situation of the SOC a treatment facility designed to bring dangerous individuals back into society it is clear its purpose is rehabilitation and not punsishment.

The defendant as stated above has clearly accepted responsibility for what he believes the crime he committed was. He testified that indeed he had conspired with B.B. and J.S. to bring cocaine base into the SOC only that he did not intend to distribute it to others. He has accepted responsibility for what he did. And should receive the 2 points adjustment downward pursuant to U.S.S.G § 3 E1.1.

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The court must consider United States Sentencing Guidelines but also has to consider the other factors set forth in Title 18, United States Code, Section 3553(a). After the Court determines his applicable Sentencing Guidelines range at the time of sentencing and that after considering the guideline range and applying the other factors in 18 U.S.C. § 3553 the court may impose any sentence authorized by law and that it was not bound by any recommendation regarding the sentence to be imposed, or by the calculations or estimation of the Sentencing Guidelines.

Section 3553(a) requires the district courts to "**impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph 2**." Section 3553(a)(2) states the purposes are:

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct,

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Section 3553(a) further directs sentencing courts to consider (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (3) the kinds of sentences available. The directives of Booker and § 3553(A) MAKE CLEAR THAT THE COURTS MAY NO LONGER UNCRITICALLY APPLY THE GUIDELINES. The guidelines are not binding, and courts need not justify a sentence outside of them by citing

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360 876 1001

factors that take the case outside the “heartland”. Rather courts are free to disagree, in individual cases and in the exercise of discretion, with the actual range proposed by the guidelines, so long as the ultimate sentence is reasonable and carefully supported by reasons tied to the § 3553(a) factors.

In this case the court should consider that at the end of any sentence given to Mr. Williams, he is destined to be returned to the SOC, until that facility finds that he is rehabilitated enough to warrant his release. It cannot be disputed that he has harmed his prospects for his release. It is for exactly this reason that he should not have his prior criminal history used against him. That criminal history is what necessitated his being placed in the SOC. He will be in the custody of the State of Washington if not the Federal Government. His further incarceration in BOP does nothing to deter crime or to rehabilitate Mr. Williams. Upon his return to the SOC, they will know to better supervise him and put better controls on him. They will also be in a better position to treat him and work towards his rehabilitation. All that will be accomplished by further keeping him in the BOP system will be to delay such treatment.

Mr. Williams requests that if sentenced to BOP that he be placed in a facility that will be able to treat his sexual deviancy and chemical dependency. It should be noted that other residents of the SOC who were sentenced for introducing child pornography into the facility have been sentenced to such facilities.

Mr. Williams also asks that he be sentenced under his current legal name of Mikaeel Youf Azeem.

CONCLUSION

Mr. Williams comes before this court destined to be incarcerated in a Federal Prison. As the court is fully aware the most important thing in his life is to re-connect with B.B. He

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360 876 1001

recognizes that he must be punished all that he asks is that the court sentence him in accordance with the requirements of 18 U.S.C. § 3553(a) and asks that the court render him whatever mercy it thinks is appropriate.

Dated this 18th day of August, 2010.

/S/Roger A. Hunko
Roger A. Hunko, WSBA #9295
Attorney for Lawrence Williams
569 Division Street, Suite E
Port Orchard, WA 98366
Phone: (360) 876-1001
Fax: (360) 895-1932
E-mail: hunko@msn.com

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2010 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the United States. I hereby certify that I have served the attorney(s) of record for the United States that are no CM/ECF participants via telefax.

/S/Roger A. Hunko
The Law Office of
Roger A. Hunko
569 Division Street, Suite E
Port Orchard, WA 98366
Phone: (360) 876-1001
Fax: (360) 895-1932
E-mail: hunko@msn.com

THE LAW OFFICE
Wecker-Hunko & Bougher
569 E, Division St.
Port Orchard, WA 98366
360 876 1001